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Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, submitted in accordance with General Assembly resolution 61/173.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

The present report coincides with the twenty-fifth anniversary of the creation of the mandate on extrajudicial, summary or arbitrary executions. Established in 1982, it was the very first of the thematic special rapporteurships set up by the Commission on Human Rights. This important anniversary makes it appropriate to reflect on the functioning of the mandate during this period. In addition, the intense scrutiny applied to the special procedures as a whole in the context of the transition from the Commission to the Human Rights Council means that consideration should be given to the ways in which the Council and the General Assembly could strengthen the support they provide to the system as a whole. Section II of the report provides information on the most recent activities undertaken by the Special Rapporteur in relation to specific situations. Section III takes note of the situation in Darfur. Section IV reviews some of the ways in which the mandate has developed over the past quarter of a century. Section V draws attention to some of the factors which have hindered the effectiveness of the techniques used, drawing in particular upon country-specific case studies. Section VI contains a recommendation that calls upon the General Assembly and the Council to take steps to remedy these shortcomings.

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I. Introduction

1. The present report marks the twenty-fifth anniversary of the creation of the mandate on extrajudicial, summary or arbitrary executions.[1] Established in 1982, this was the very first of the individual thematically focused rapporteurships set up by the Commission on Human Rights. This important anniversary, combined with the intense scrutiny applied to the special procedures as a whole in the context of the transition from the Commission to the Human Rights Council, makes it appropriate, and even essential, to reflect on key aspects of the current functioning of the mandate. Section II of this report provides information on the most recent activities undertaken by the Special Rapporteur in relation to specific situations. Section III takes note of the situation in Darfur. Section IV reviews some of the ways in which the mandate has developed over the past quarter of a century. Section V draws attention to some of the factors which have hindered the effectiveness of the techniques used, drawing in particular upon country-specific case studies. In Section VI the report calls upon the General Assembly and the Council to take steps to remedy these shortcomings.

2. For assistance in the preparation of the present report, the Special Rapporteur is grateful to the staff of the Office of the High Commissioner for Human Rights and to William Abresch, Director of the Project on Extrajudicial Executions based at the New York University School of Law, who has provided first-rate assistance and advice. Patrick Mair also contributed importantly to the underlying research.

II. Country visits

A. Visits requested

3. While a number of visits have been carried out successfully, as of August 2007, a lack of cooperation by States has prevented the Special Rapporteur from visiting 90 per cent of the countries from which he has requested invitations. He has identified 30 countries in relation to each of which he has received credible reports of significant concerns arising in terms of his mandate. In each of these cases he has concluded that a country visit is warranted if he is to carry out the responsibilities entrusted to him by the Human Rights Council. He is grateful to the Governments of Guatemala, Lebanon and the Philippines, each of which has facilitated a visit during the past year.

4. Since his previous report, the Governments of Brazil, the Central African Republic and Yemen have issued invitations to the Special Rapporteur. Brazil and Yemen have not set dates for a visit, despite several requests to do so. A mission to Guinea was approved and ready to go in March 2007, but was cancelled at the last moment, as explained below.

[1] When the mandate was first created the focus was on "summary executions". Along with the expansion of the mandate which is documented in this report has come additional terminology to ensure that all types of killings for which governmental responsibility is alleged are included within the confines of the mandate. In the remainder of this report the term "extrajudicial executions" is used for convenience to describe the mandate as a whole.

5. The responses of the remaining 23 countries have ranged from complete silence, through formal acknowledgement, acceptance in principle but without meaningful follow-up, to outright rejection.[2] The Government of Singapore, for example, with the highest per capita rate of judicial executions in the world, has firmly rejected a request for a visit. Instead the Government has opted to level ad hominem attacks by accusing the Special Rapporteur of pursuing a "personal agenda" that exceeds his mandate. Rather than opting to engage, the Government of Singapore asserts that it is for the Government whose practices are called into question, rather than the Special Rapporteur, to interpret the mandate given by the Council.

6. Six members of the Human Rights Council have failed to issue requested invitations: Bangladesh, China, India, Indonesia, Pakistan and Saudi Arabia. In the light of the pledges offered in connection with elections to the Human Rights Council and of provisions in the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council urging all States to cooperate with, and assist, the special procedures in the performance of their tasks,[3] this failure on the part of Council members is especially problematic. In some cases, the relevant requests were first made some seven years ago.

7. Another State, the Islamic Republic of Iran, has issued a "standing invitation" to the special procedures but has repeatedly failed to respond to requests that dates for a visit be set, despite several meetings and an extensive correspondence. The remaining States with outstanding requests are El Salvador, Israel, Kenya, the Lao People's Democratic Republic, Nepal, Russian Federation, Singapore, Thailand, Togo, Trinidad and Tobago, Uganda, the United States of America, Uzbekistan, Venezuela (Bolivarian Republic of) and Viet Nam. The consequences of this overall situation are addressed below in section IV of the report.

B. An aborted mission

8. An agreed visit to the Republic of Guinea had to be aborted in March 2007, after the Government postponed the mission and subsequently failed to agree to a series of requests to reschedule the mission.

9. In the light of reports the Special Rapporteur received regarding events in Guinea in January 2007, he wrote to the Government on 9 February 2007 requesting an invitation to conduct a mission, and the Government extended an invitation to visit in a letter dated 22 February 2007. Subsequently, the Government agreed for a mission to take place from 21 to 25 March 2007. After a considerable amount of preparatory work for the mission had been undertaken, the Government requested in a letter dated 16 March that the mission be postponed for "evident administrative reasons". On 3 April 2007, the Special Rapporteur wrote to the Government suggesting new dates of 16-21 April 2007 for the mission and, while an acknowledgement of the letter was received, no agreement was reached. He again wrote to the Government on 13 April 2007 asking the Government to propose new dates for the mission, but only a letter of acknowledgement was received. While the Special Rapporteur is grateful to the Government for its initial agreement to a visit,

[2] The precise details are contained in document A/HRC/4/20, paras. 11-14.

[3] See Human Rights Council resolution 5/2 of 18 June 2007 (A/HRC/5/21, chap. I, sect. A).

the last-minute postponement of the mission, combined with its failure to agree upon new dates, was deeply disappointing.

10. According to credible and consistent information received from the United Nations, non-governmental organizations and media sources, during January and February 2007, at least 130 persons were killed and over 1,500 wounded by the security forces of the Government of Guinea in the course of suppressing a general strike led by trade unions and other civil society actors. The Special Rapporteur received numerous reports that the security forces opened fire on unarmed protestors in violation of accepted standards of international human rights law.

11. The Special Rapporteur notes the adoption of legislation on 18 May 2007 establishing a new independent national commission of inquiry charged with "conducting investigations into grave human rights violations and offences committed during the strikes of June 2006 and January-February 2007".[4] Much remains to be done, however, including the provision of adequate government funding for the commission, the initial appointment of its 19 members, outreach to potential witnesses and victims, and implementation of an effective witness protection programme. These factors, as well as highly problematic provisions providing for the exclusion of the media and the public from hearings, combine to give little confidence that the commission will achieve any of its stated objectives, other than relieving pressure upon a Government which had been facing strong domestic and international calls for accountability.

C. Updates on visits undertaken

12. The Special Rapporteur visited the Philippines from 12 to 21 February 2007 and travelled to Manila, Baguio and Davao. During the visit, he met with virtually all of the relevant senior officials of Government and with numerous members of the Armed Forces of the Philippines and of the Philippines National Police in Baguio and Davao as well as Manila. The Special Rapporteur is grateful to the Government for the full cooperation it accorded to him. He spoke with members of a large number of civil society organizations with diverse views, interviewed witnesses to 57 incidents involving 96 extrajudicial executions, and also received files regarding a total of 271 extrajudicial executions.

13. Over the past six years, there have been many extrajudicial executions of leftist activists in the Philippines. These killings have eliminated key civil society leaders, including human rights defenders, trade unionists, land reform advocates and others, intimidated a vast number of civil society actors and narrowed the country's political discourse. Depending on who is counting and how, the total number of such executions ranges from over 100 to over 800. Counter-insurgency strategy and recent changes in the priorities of the criminal justice system are of special importance to understanding why the killings continue.

14. Many in the Government have concluded that numerous civil society organizations are "fronts" for the Communist Party of the Philippines and its armed group, the New People's Army. One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas,

[4] Amnesty International, Guinea: "Soldiers Were Shooting Everywhere": The security forces' response to peaceful demands for change, 27 June 2007.

the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instil fear into the community. The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers.

15. The Special Rapporteur concluded at the completion of his visit that the military was in a state of denial concerning the numerous extrajudicial executions in which its soldiers were implicated. Military officers argue that many or all of the extrajudicial executions have actually been committed by the communist insurgents as part of an internal purge. The New People's Army does commit extrajudicial executions, sometimes dressing them up as "revolutionary justice", but the evidence that it is currently engaged in a large-scale purge is strikingly unconvincing. The military's insistence that the "purge theory" is correct can only be viewed as a cynical attempt to displace responsibility.

16. Some of the other situations in which extrajudicial executions occur in the Philippines were also studied during the visit. Journalists are killed with increasing frequency as a result of the prevailing impunity together with the structure of the media industry. Disputes between peasants and landowners, as well as armed groups, lead to killings in the context of agrarian reform efforts, and the police often provide inadequate protection to the peasants involved. A death squad operates in Davao City, with men routinely killing street children and others in broad daylight. While human rights abuses related to conflicts in western Mindanao and the Sulu archipelago have received less attention that those related to the conflict with the communist insurgency, serious abuses clearly do occur and improved monitoring mechanisms are necessary.

III. The situation in Darfur

17. In terms of the mandate on extrajudicial executions, the situation in Darfur has long been one of the most troubling. The then Special Rapporteur visited Darfur in 2004 and the present Special Rapporteur has kept the situation very carefully under review. At the same time, he has refrained from requesting another country mission in light of various ongoing activities of the mechanisms of the Human Rights Council designed to address the situation.

18. In its resolution 4/8 of 30 March 2007[5] the Human Rights Council appointed the Special Rapporteur a member of a group of experts on the situation of human rights in Darfur. The Council acknowledged the seriousness of ongoing violations of human rights and international humanitarian law in Darfur and the lack of accountability of the perpetrators of such crimes. The challenge, however, is to move beyond the mountain of paper condemnations and expressions of deep concern which have achieved all too little in terms of protection of the human rights of the population of Darfur.

19. The expert group decided to adopt a pragmatic approach designed to promote step-by-step compliance by the Government of the Sudan. After reviewing a depressingly large assortment of recommendations already made by international

[5] See A/HRC/4/123, chap. I, sect. A.

human rights bodies the expert group identified priority areas and selected and synthesized various recommendations whose implementation it felt could facilitate a systematic improvement in the situation. It then indicated specific measures which should be taken in the short (3 months) and medium (12 months) terms.[6] This approach was warmly welcomed by the Council and the expert group will continue for the remainder of 2007 to monitor the responsiveness of the Government of the Sudan.

20. Much of the energy of the international community in the past year has been on the need to establish a larger and more effective international presence in Darfur. The adoption of Security Council resolution 1769 (2007) on 31 July 2007 was thus of major significance. Adopted unanimously, it increases almost fourfold the existing number of peacekeepers authorized to be deployed in the Sudan, gives both the United Nations and the African Union important roles, and authorizes action to be taken under Chapter VII of the Charter of the United Nations by the African Union-United Nations Hybrid Operation in Darfur to protect its own personnel and to prevent "armed attacks, and protect civilians, without prejudice to the responsibility of the Government of the Sudan" (para. 15 (a) (ii)).

21. In the year ahead, however, even if the Hybrid Operation proceeds on schedule, it will be important to ensure that the human rights dimensions of the situation are also consistently addressed. The Human Rights Council must thus remain vigilant and ready to take action whenever necessary.

IV. Review of the mandate's development over 25 years

22. It is instructive to review the development of the mandate over the past 25 years. In many ways, this mandate has been at the forefront of efforts to develop an effective overall international regime for responding to human rights violations. This is partly a function of the fact that it was the very first of the thematic special rapporteurships and partly because of the central importance of the issue of unlawful killings which constitute the core of the mandate.

23. This is not the first review carried out by the Special Rapporteur. In 1992, after a decade of experience, one of his predecessors wrote that:

> The mandate of the Special Rapporteur ... has evolved during the last 10 years. This evolution is due, on one hand, to the variety of situations presented to the Special Rapporteur which have required interpretation of the concept of "summary or arbitrary execution" and, on the other, to subsequent resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights concerning the mandate of the Special Rapporteur, and the continuing development of international standards which directly or indirectly concern the right to life. Similarly, the compelling necessity to respond, as effectively as possible, to situations where the right to life is in danger, and the response of Governments, the General Assembly, the Economic and Social Council and the Commission on Human Rights to the

[6] See A/HRC/5/6.

activities of the Special Rapporteur, have contributed to the evolution of the working methods of the Special Rapporteur.[7]

24. The reference to "working methods" must be read as encompassing not only the procedures used but also the types of issues dealt with. While much has changed since these reflections of 15 years past, one continuity is the complex matrix out of which the mandate's innovations continue to emerge.

25. The Commission has defined the mandate by reference to the phenomena of extrajudicial, summary and arbitrary executions while largely relying on the expertise of those appointed as Special Rapporteur to define the legal framework and develop appropriate working methods. The continuing contributions of the Commission, the General Assembly and now the Council to the mandate's development have been principally by way of calling the Special Rapporteur's attention to groups of victims and country situations that are of special concern. In these respects, the mandate reflects the basic architecture of the special procedures system, which couples the power and political understanding of Governments with the independent legal expertise of those appointed as mandate holders.

26. What follows is by no means an exhaustive survey of the mandate's development over the past two and a half decades. The Special Rapporteur plans to prepare a more detailed and comprehensive report in the course of the next year or so. Instead, this report presents a series of case studies chosen to illuminate several of the key mechanisms by which the mandate has developed to respond to new opportunities and take on emerging challenges. Consideration is thus given to developments in relation to a select range of the substantive issues addressed by the mandate as well as some of the procedural issues in terms of techniques used to promote the objectives of the mandate.

A. Confronting problematic innovations in counter-terrorism tactics

27. The past few years have seen innovations in Governments' counter-terrorism tactics, some of which are clearly problematic in human rights terms. In some instances, Governments have contended that these tactics — and the terrorist methods they counter — are not covered by the existing legal framework of human rights and humanitarian law. The roles and responsibilities entrusted to the special procedures system have proven valuable in responding to these arguments. Independent experts have been well positioned to analyse the ways in which existing law can be adapted in accordance with widely accepted principles to address new situations. And they have been able to do so in ways that are objective and informed both by rigorous legal analysis and by extensive experience.

28. The practice of so-called "targeted killings" provides an example. The Special Rapporteur has addressed allegations concerning such killings to both Israel and the United States, as well as to countries on whose territories such killings have taken place.[8] The largest challenge has been the lack of cooperation these countries have shown: Israel has not addressed the substance of allegations, and the United States has insisted that the whole issue falls outside the mandate. The Special Rapporteur

[7] E/CN.4/1992/30, para. 605.

[8] A/HRC/4/20/Add.1, annex, pp. 244-246 and 342-361; E/CN.4/2006/53/Add.1, annex, pp. 129-136, 183-184 and 264-265; E/CN.4/2005/7/Add.1, paras. 357-361.

has used thematic sections of his reports to clarify the manner in which human rights and humanitarian law norms apply to this tactic. The Special Rapporteur's report to the Commission on Human Rights in 2005 discussed due process safeguards and noted that "[e]mpowering Governments to identify and kill 'known terrorists' places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted ... it makes a mockery of whatever accountability mechanisms may have otherwise constrained or exposed such illegal action under either humanitarian or human rights law".[9]

29. The Special Rapporteur has engaged in a robust and constructive dialogue with the United States regarding its contention that targeted killings are part of armed conflict and that the mandate does not apply to armed conflicts. The Special Rapporteur rejected this contention and called the Council's attention to the extent to which excluding such conduct from the mandate would risk its very purpose.[10] The Commission had endorsed this view, stating that "international human rights law and international humanitarian law are complementary"[11] and expressing "grave concern over the continued occurrence of violations relating to the right to life highlighted in the report of the Special Rapporteur as deserving special attention [including] violations of the right to life during armed conflict".[12]

30. The Special Rapporteur has also addressed the adoption of "shoot-to-kill policies" by law enforcement agencies in response to the threat of suicide bombers. While recognizing that unconventional threats may demand unconventional responses, the Special Rapporteur emphasized that existing human rights law already provides a framework for reconciling State obligations to respect the rights of suspects and to protect the lives of the population at large. The Special Rapporteur clarified how the general rules regulating the use of lethal force by law enforcement officials apply to the unusual case of a suspected suicide bomber.[13]

31. The Special Rapporteur noted that, on the one hand, there are circumstances in which the immediate use of lethal force without a prior warning may be justified but explained that, as a matter of law, a State cannot "strip the use of lethal force of its usual safeguards ... without providing any alternative safeguards".[14] He explained the form that such alternative safeguards might take. He also defended the key role of public accountability in ensuring that the right to life is protected, and he noted that a State using such a policy would need to "accept the implications of shooting based on intelligence information on the requirement that States publicly investigate deaths and prosecute perpetrators where appropriate. Investigations and trials may require the disclosure of some intelligence information. To withhold such information would be to replace public accountability with unverifiable assertions of legality by the Government, inverting the very idea of due process".[15] This general legal analysis has informed his correspondence with the United Kingdom on the case of Jean Charles de Menezes, illustrating again the manner in which the

[9] E/CN.4/2005/7, para. 41.

[10] A/HRC/4/20, paras. 18-28; see also A/HRC/4/20/Add.1, annex, pp. 342-358.

[11] *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and corrigenda), chap. II, sect. A, resolution 2005/34, preamble.

[12] Ibid., *2002, Supplement No. 3* (E/2002/23), chap. II, sect. A, resolution 2002/36, para. 13 (a).

[13] E/CN.4/2006/53, paras. 44-54.

[14] Ibid., para. 49.

[15] Ibid., para. 54.

mandate's working methods allow for the fruitful interaction of general analysis and its concrete application.[16]

32. The Special Rapporteur's engagement on these issues has demonstrated that what sometimes seems like a weakness of the special procedures system — the idea of a dialogue of a single expert with all of the countries of the world — can also be one of its strengths. Through continual engagement with a large number of countries facing a vast variety of complex situations, special procedures mandate holders are unlikely to be susceptible to claims that any particular event or situation is so exceptional as to fall outside the existing legal framework. Their legal expertise, together with their broad human rights experience that is further developed within their mandates, mean that they can at once apply the law to novel situations and recognize that old practices do not become new merely through the application of new names. Their independent status also insulates them from political pressures that might tend to excuse unlawful practices against unpopular groups of people and thus undermine the universality of fundamental norms. In playing this role, a number of mandate holders have addressed a range of practices — including diplomatic assurances in cases of refoulement, terrorist profiling, terrorist group listing and proscription and the use of secret prisons — thereby ensuring that international human rights instruments continue to offer effective protection of individual rights, even as the challenges facing States continue to evolve.[17]

B. Assisting in the protection of refugees and internally displaced persons

33. The Special Rapporteur has addressed a number of threats to the lives of refugees, other migrants, and internally displaced persons. In a field in which many actors have highly specialized mandates or remits the comprehensive normative approach adopted by the Special Rapporteur makes an important contribution. Refugees were identified in the first report of the Special Rapporteur as one of 15 sets of "[t]argets of summary or arbitrary executions",[18] and he focused especially on the dangers that counterinsurgency operations could pose to those in refugee camps.[19] That report also discussed three specific allegations that the Special Rapporteur had received regarding the killing of refugees, illustrating that from the beginning that the Special Rapporteur's thematic concerns emerged from concrete situations.[20]

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[16] E/CN.4/2006/53/Add.1, annex, pp. 258-261.

[17] A/60/316, paras. 29-52 (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment); A/HRC/4/26, paras. 32-62 (Special Rapporteur on the promotion and protection of human rights while countering terrorism); A/61/267, paras. 9-41 (idem); E/CN.4/2006/7, paras. 53-59 (Working Group on Arbitrary Detention).

[18] E/CN.4/1983/16, para. 104.

[19] Ibid., para. 114.

[20] See E/CN.4/1983/16. These allegations were that Salvadoran soldiers killed Salvadoran refugees in camps in Honduras (note verbale, para. 155; response, annex IX, p. 11), that civilians were killed in refugee camps in Lebanon while they were under the control of the Israeli armed forces (note verbale, para. 174; response, annex IX, p. 32), and that the South African military attacked Namibian refugee camps located in Angola (letter, para. 184).

34. The work of the Special Rapporteur in relation to these issues provides a good illustration of the way in which potentially overlapping mandates adjust to accommodate one another and to avoid unproductive duplication of effort. Thus, the early work of the Special Rapporteur could well have provided some of the impetus to establish the mandate of the Representative of the Secretary-General on internally displaced persons, which the Commission did in 1992, 10 years after the establishment of the mandate on extrajudicial executions. In the early years after the appointment of the Representative the Special Rapporteur continued to address issues concerning internally displaced persons and related issues systematically and this was encouraged by a 1995 Commission resolution calling upon the special procedures to pay special attention to the plight of IDPs.[21] In response, in 1999, the Special Rapporteur undertook an exchange of correspondence with the Government of Colombia that included considerable discussion of the situation of IDPs in that country.[22] The forced internal relocation of a group of individuals in Myanmar was also the subject of a communication.[23] Similarly, the Special Rapporteur indicated in 2000 that she had received during the period under review "disturbing reports of deliberate attacks against internally displaced persons, particularly in the context of internal conflict and unrest".[24] In several reports, the Special Rapporteur refers to the reports of the Representative of the Secretary-General on internally displaced persons for a "broader overview of the phenomenon".[25] In her 2003 report, the Special Rapporteur noted

> that extrajudicial killings in the context of global migration have become of increasing concern. The issue is increasingly highlighted as people find it necessary to move, both inside and outside their countries, for political, economic, social or other reasons, as the world population grows. The Special Rapporteur wishes to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their jurisdiction regardless of the citizenship of the persons concerned.[26]

35. The analysis of country situations was also guided by this emphasis on the applicability of the right to life to all individuals, including those who are seeking refuge inside or outside their own countries. For example, the Special Rapporteur's report to the Commission in 2004 dealt in the same section with "reports of deliberate attacks against refugees and internally displaced persons".[27]

36. Overall, the emphasis attached by the Special Rapporteur to cases involving refugees and IDPs has changed since the advent of the Representative dealing with internally displaced persons. Relevant cases continue to be taken up, especially when it seems necessary to complement the action taken by the Representative or when the Special Rapporteur feels that he can bring added value to the work undertaken by other special procedures. Thus, for example, the Special Rapporteur sent communications to Egypt with regard to the killing of refugees in Cairo in

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[21] *Official Records of the Economic and Social Council, 1995, Supplement No. 4* (E/1995/23), chap. II, sect. A, resolution 1995/57.

[22] E/CN.4/1999/39/Add.1, para. 58 et seq.

[23] E/CN.4/1999/39, para. 39.

[24] A/55/288, para. 26.

[25] See, e.g. E/CN.4/1997/60, para. 62.

[26] E/CN.4/2003/3, para. 55.

[27] E/CN.4/2004/7, para. 65.

2005[28] and to Rwanda with regard to the massacre of refugees.[29] But in general, the advent of an active and effective mandate concerning internally displaced persons has enabled the Special Rapporteur to pay less attention to the plight of those groups and instead focus his very limited resources elsewhere.

C. Holding armed groups and other non-State actors to account for human rights abuses

37. When extrajudicial executions occur during an armed conflict, determining whether the State has international legal responsibility can be legally complex. The question what to do if an armed opposition group is responsible can be even more complex. The mandate's approach to such extrajudicial executions has developed considerably over the past 25 years, demonstrating how the Special Rapporteur is at once constrained by the prevailing normative framework and pushed by the needs of victims to explore its possibilities.

38. Paramilitary groups tied to Governments were referred to from the first years of the mandate.[30] The Special Rapporteur explained in his review of the first decade of activities of the mandate in 1992 that, while the inclusion of paramilitary groups had been "questioned on occasion by a few Governments, which consider that the mandate should be limited to 'those cases in which there was actual involvement of a government official'", the practice of focusing on such groups remained valid.[31] In the same year, the Working Group on Enforced or Involuntary Disappearances drew the Commission's attention to the use of what it termed "civil defence units" in internal armed conflicts, noted that they had often been implicated in human rights abuses and suggested "minimum conditions for their operations".[32]

39. These interpretations of the mandates' scope were endorsed by the Commission. It adopted resolutions requesting the special procedures to "pay due attention" to the human rights implications of "civil defence forces".[33] The Special Rapporteur subsequently dealt with such groups in a broad range of countries and brought that experience to bear in crafting recommendations to prevent the involvement of such groups in extrajudicial executions. For example, in correspondence with the Government of Sri Lanka regarding extrajudicial executions by "home guards", the Special Rapporteur responded in part by "stress[ing] the need for strict control of any such auxiliary force by the security forces" but then, drawing on his by then extensive experience, went on to state that, "In view of the experience of other countries, where paramilitary groups are responsible for numerous and grave human rights violations, the Government may wish to consider as a preferable solution strengthening the regular security forces in areas with armed conflict, rather than creating a paramilitary body."[34]

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[28] E/CN.4/2006/53/Add.1, annex, p. 68 et seq.

[29] E/CN.4/2000/3/Add.1, para. 388.

[30] E/CN.4/1983/16, paras. 111 and 186; E/CN.4/1984/29, paras. 91 and 132.

[31] E/CN.4/1992/30, chap. IV, paras. 611-613.

[32] E/CN.4/1992/18, paras. 378-381.

[33] *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap. II, sect. A, resolution 1992/57, para. 3.

[34] E/CN.4/1995/61, para. 293.

40. It took much longer for the mandate to find a suitable means for responding to extrajudicial executions by rebels and other armed opposition groups. This was an issue of finding appropriate working methods more than an issue of substantive law. In 1992, the Special Rapporteur reported that he had received allegations concerning human rights abuses committed by a substantial number of armed groups, including the National Liberation Army and Revolutionary Armed Forces of Colombia in Colombia, the Eritrean People's Liberation Front and the Ethiopian People's Revolutionary Front in Ethiopia, the Unidad Revolucionaria Nacional Guatemateca in Guatemala, Shining Path and Tupac Amarú in Peru, and the Liberation Tigers of Tamil Eelam and Muslim Home Guards in Sri Lanka, but he concluded that:

> Within the United Nations human rights system, it is generally considered that addressing appeals to such entities or providing them with the opportunity to respond to allegations accusing them of human rights violations would be inappropriate, given their legal status. Consequently, existing working methods offer little opportunity for responding effectively to allegations concerning opposition groups.[35]

41. While the legal issues and diplomatic sensibilities were real, the consequences of unconditionally refusing to address appeals to armed groups were problematic. From the perspective of a victim's family, an extrajudicial execution is no less devastating for having been committed by rebels rather than by government forces, and addressing complaints to the Government will generally prove futile if the abuses were committed by an armed group. Moreover, Governments accused of extrajudicial executions were understandably unhappy if comparable acts perpetrated by armed groups within their countries were simply ignored in the human rights context.

42. Recognizing these consequences, as well as the Commission's abiding interest in victims, the Special Rapporteur began to address a range of non-State actors involved in complex situations. Some of these had widely recognized international legal personality: the Palestinian Authority (first addressed in the 1996 report)[36] and United Nations peacekeeping missions (first addressed in 2006).[37] However, the Special Rapporteur has also addressed other non-State actors, such as the "Turkish Cypriot community" (in 1997 and 1998),[38] the "Taliban movement in Afghanistan" (1998),[39] and the Liberation Tigers of Tamil Eelam (2006 and 2007).[40] The Special Rapporteur observed that addressing complaints to armed opposition groups "may be both appropriate and feasible where the group exercises significant control over territory and population and has an identifiable political structure (which is often not the case for classic 'terrorist groups')."[41] He explained that the Commission and its special procedures had a right to hold armed groups to account, a *droit de regard*, whatever the international legal status of a particular group might be.

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[35] E/CN.4/1992/30, para. 627; see also para. 614.

[36] E/CN.4/1996/4, paras. 537-539.

[37] An allegation letter was sent to the United Nations Stabilization Mission in Haiti (E/CN.4/2006/53/Add.1, annex, pp. 322-333). The much earlier engagement with the United Nations Commissioner and Council for Namibia might also be cited in this context, although it was of a quite different character (E/CN.4/1983/16, paras. 180-188 and annexes VII-VIII).

[38] E/CN.4/1997/60/Add.1, para. 575; E/CN.4/1998/68/Add.1, paras. 446-449.

[39] E/CN.4/1998/68/Add.1, paras. 446-449.

[40] E/CN.4/2006/53/Add.1, annex, pp. 319-321; A/HRC/4/20/Add.1, annex, pp. 384-386.

[41] E/CN.4/2005/7, para. 76.

43. The Special Rapporteur developed this theme in the context of a report on a country visit in which he observed:

> Human rights norms operate on three levels — as the rights of individuals, as obligations assumed by States, and as legitimate expectations of the international community ... [A] non-State actor ... remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights.
>
> ... The international community does have human rights expectations to which it will hold [an armed group], but it has long been reluctant to press these demands directly if doing so would be to "treat it like a State".
>
> It is increasingly understood, however, that the human rights expectations of the international community operate to protect people, while not thereby affecting the legitimacy of the actors to whom they are addressed.[42]

44. The Special Rapporteur's efforts to hold armed groups accountable for their abuses on this realistic basis have been welcomed by the Council.

D. Developing effective working methods to fulfil the mandate

45. There is one key benchmark in evaluating the working methods of the Special Rapporteur. It is the injunction by the Commission and the Council to the Special Rapporteur to "respond effectively to information that comes before him". This injunction was first issued in 1984 and continues to be the key element in defining the procedures used by the mandate. Within that framework the Commission has given the Special Rapporteur considerable discretion to develop suitable and effective working methods.[43] Over the years, numerous innovations have been attempted and, depending on their effectiveness in practice, each has either earned a permanent place among the mandate's core working methods or has been abandoned. The motivation for continual innovation may be readily perceived: No set of working methods has proven fully adequate to the task of responding effectively to allegations of extrajudicial executions.

46. The core working methods of the Special Rapporteur have been written communications (allegation letters and urgent appeals) and in situ visits to countries. The impetus for change can be seen, at one level, in the low response rate of Governments to such communications and requests to visit. The rate of response

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[42] E/CN.4/2006/53/Add.5, paras. 25-27.

[43] *Official Records of the Economic and Social Council, 1984, Supplement No. 4* and corrigendum (E/1984/14 and Corr.1), chap. II, sect. A, resolution 1984/35, para. 6; see also General Assembly resolution 39/110, para. 5. With only minor changes, this formulation has continued to be used since then. Most recently, the Commission and the General Assembly have encouraged the Special Rapporteur "to respond effectively to reliable information that comes before him" (ibid., *2005, Supplement No. 23* and corrigenda (E/2005/23 and corrigenda), chap. II, sect. A, resolution 2005/34, para. 13; General Assembly resolution 61/173 of 1 March 2007, para. 10).

to written communications is difficult to calculate with precision;[44] however, the proportion of communications sent for which responses have been received in a given year provides a reasonable indication of the situation. This proportion has been reported for a number of years and has generally been roughly one half.[45] The situation with respect to requests to visit is even less encouraging. As the Special Rapporteur reported in his review of the mandate's first 10 years, "The small number of countries which have invited the Special Rapporteur to undertake mission during the last decade is one of the most important limitations on the effectiveness in fulfilling his mandate. ..."[46] The situation has not improved.

47. The problem is, of course, even more serious than low response rates suggest: many of the countries with regard to which the Special Rapporteur has received the most troubling allegations are among the least cooperative with regard to engaging in constructive correspondence and accepting requests to visit. Unfortunately, the Special Rapporteur has relatively few means with which to address this failure of cooperation within the framework of these core working methods. The Special Rapporteur has repeatedly raised this issue and made recommendations to the Commission and the General Assembly that, for example, "[t]he General Assembly should appeal to all States that have so far failed to respond meaningfully to the requests for visits made by the Special Rapporteur to take appropriate action",[47] and these bodies have urged fuller cooperation;[48] however, such general exhortations have evidently had little if any effect.

48. Another level at which the Special Rapporteur has developed working methods in an effort to respond effectively to allegations is in attempting to increase the effectiveness of communications and visits in preventing extrajudicial executions and protecting victims even as response rates remain low. Several such methods merit mention. One is engaging in sustained exchanges of correspondence regarding

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[44] There are several reasons that the ratio of Government communications to Special Rapporteur communications is an imperfect indicator of the response rate. One is that allegations sent in one year may receive responses in another. Another is that some responses address only a fraction of the cases that were raised in a single communication or, less often, address cases raised in multiple allegation letters or urgent appeals. However, the information technology resources at the disposal of the special procedures are ill-suited to tracking the status of each individual case.

[45] Responses as a percentage of allegations letters and urgent appeals is 33 in 1983, 50 in 1984, 25 in 1985, 62 in 1987, 40 in 1988, 42 in 1989, 54 in 2005, 57 in 2006 and 55 in 2007 (E/CN.4/1989/25, para. 304; E/CN.4/2005/7, para. 21; E/CN.4/2006/53, para. 12; A/HRC/4/20, para. 9).

[46] E/CN.4/1992/30, para. 639.

[47] A/61/311, para. 65.

[48] See, e.g. General Assembly resolution 61/173, para. 13 of 1 March 2007 in which the Assembly urged "all States, in particular those that have not done so, to cooperate with the Special Rapporteur so that his mandate can be carried out effectively, including by favourably and rapidly responding to requests for visits, mindful that country visits are one of the tools for the fulfilment of the mandate of the Special Rapporteur, and by responding in a timely manner to communications and other requests transmitted to them by the Special Rapporteur"; Commission on Human Rights resolution 2005/34, para. 14, in which the Commission strongly urged "all States to cooperate with and assist the Special Rapporteur so that his mandate may be carried out effectively, including, where appropriate, by issuing invitations to the Special Rapporteur when he so requests, in keeping with the usual terms of reference for mission by special rapporteurs of the Commission, and to respond to the communications transmitted to them by the Special Rapporteur".

a single case through various forms of written follow-up.[49] Three scenarios in which such sustained correspondence has proven especially valuable are when there has been an ill-defined disagreement regarding the application of international legal standards in need of clarification,[50] when the provision of specific pieces of documentation would have helped resolve an allegation,[51] and when an allegation's resolution has been subject to an ongoing legal process.[52] Another such method is for the Special Rapporteur to provide the Council with observations on each exchange of correspondence and the consequent status of the allegations involved. This practice began in 1992[53] and has evolved since then; in 2005, the Special Rapporteur supplemented narrative observations with a classification of the response's adequacy so as to permit the more rapid assessment of the status of allegations and the cooperation shown by Governments.[54] Another such method relates to transparency. For most of the mandate's history, only short summaries of the correspondence were included in the Special Rapporteur's reports. The value of such succinct accounts declined, however, as the Special Rapporteur began providing observations on the exchange of correspondence, and in 2006 the Special Rapporteur reintroduced the practice (abandoned in 1987)[55] of providing the full text of correspondence so as to permit a more complete understanding of the dimensions of factual and legal disagreements.[56] As a final example, in 2006, the Special Rapporteur initiated follow-up reports on visits that would provide an update on the extent to which the State in question had implemented the

[49] The use of "follow-up letters" was introduced in 1992 (E/CN.4/1993/46, para. 28).

[50] An exchange of correspondence with the Government of the United States concerning legal issues surrounding the use of targeted killings served this purpose (A/HRC/4/20/Add.1, annex, pp. 342-358).

[51] For instance, a copy of a "birth certificate, passport or other official document confirming that she was over 18 at the time of the crime" was requested in regard to allegations that a juvenile offender had been sentenced to death in the Islamic Republic of Iran (A/HRC/4/20/Add.1, annex, p. 153).

[52] For instance, the Special Rapporteur sent an urgent appeal to the Government of Bangladesh concerning an attack on Sumi Khan, and the Government responded with facts concerning the incident and the information that four persons had been arrested. The Special Rapporteur characterized this as a "largely satisfactory response"; however, he sent a follow-up letter seeking "information relating to the outcome of this case" (E/CN.4/2006/53/Add.1, annex, pp. 30-31; A/HRC/4/20/Add.1, annex, p. 49). Another example would be the correspondence with the Government of Thailand that continued as official inquiries into the events at Tak Bai continued (E/CN.4/2006/53/Add.1, annex, pp. 242-246; E/CN.4/2005/7/Add.1, paras. 717-720).

[53] See E/CN.4/1993/46; for comments on the rationale behind providing observations, see E/CN.4/1994/7, para. 33, and E/CN.4/2006/53/Add.1, para. 21.

[54] In the Special Rapporteur's 2005 report, the categories were "substantive response", "partial response", "allegations denied", "acknowledged", "no response", and "awaiting translation" (E/CN.4/2005/7, para. 22). In 2006, these were changed to "largely satisfactory response", "cooperative but incomplete response", "allegations rejected but without adequate substantiation", "receipt acknowledged", "no response", "United Nations translation awaited", and "no response (recent communication)" (E/CN.4/2006/53/Add.1, paras. 14-20). This set of categories was also used in the following year (A/HRC/4/20/Add.1, para. 5).

[55] There was considerable flux in how the Special Rapporteur reported on communications in the early years of the mandate; however, this involved providing relatively complete texts in 1983 and 1986 (see E/CN.4/1983/16/Add.1 and E/CN.4/1986/21).

[56] See E/CN.4/2006/53/Add.1.

recommendations made in the Special Rapporteur's report on the visit. The first such report covered Brazil, Honduras, Jamaica, and the Sudan.[57]

49. In addition to these efforts to at once improve response rates and to improve the effectiveness of realized country visits and exchanges of correspondence, the Special Rapporteur has continually sought out additional working methods to complement those core methods. Some of these have been adopted in response to specific requests by the Commission and Council; others have been at the initiative of the Special Rapporteur within the general mandate. Such working methods have included:

- In the early years of the mandate, notes verbales were used to obtain information on the phenomenon of extrajudicial executions and on existing institutional and legal safeguards from Governments and from specialized agencies and non-governmental organs in consultative status with the Economic and Social Council.[58]
- The Special Rapporteur cooperated with the Ad Hoc Working Group on southern Africa.[59]
- The Special Rapporteur has participated in international standard-setting efforts, such as that resulting in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.[60]
- The possibility of advising in technical assistance efforts was explored.[61]
- Consultations with government representatives "in connection with alleged summary or arbitrary executions in their country" have been conducted.

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[57] See E/CN.4/2006/53/Add.2.

[58] E/CN.4/1983/16, paras. 9-18 and annexes II-V.

[59] E/CN.4/1992/30, para. 640.

[60] Economic and Social Council resolution 1989/65. In his 1986 report to the Commission, the Special Rapporteur argued that there was "a need to develop international standards designed to ensure that investigations are conducted into all cases of suspicious death and in particular those at the hands of the law enforcement authorities in all situations" (E/CN.4/1986/21, para. 209; see also E/CN.4/1983/16, para. 230; E/CN.4/1987/20, para. 246). The Council endorsed this recommendation and invited the Special Rapporteur "to examine the elements to be included in such standards" (resolution 1987/60, para. 8). He received a number of proposals regarding these elements, and summarized those he considered most important in his 1988 report (E/CN.4/1988/22, para. 194). He also noted that the Council had requested the Committee on Crime Prevention and Control to embark on a similar project and the cooperation thus far established (ibid., para. 191). He was consulted during that body's drafting efforts, and the following year he reported to the Commission that all of the elements he had listed as most important were included in the instrument it drafted for the Council's adoption (E/CN.4/1989/25, para. 298). In his 1990 report, the Special Rapporteur characterized the Council's adoption of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions as a "milestone" for the mandate (E/CN.4/1990/22, para. 461). He noted that these principles were tightly consistent with the approach he had previously taken to implementing the mandate, and concluded that, "Any Government's practice that fails to reach the standards set out in the principles may be regarded as an indication of the Government's responsibility, even if no government officials are found to be directly involved in the acts of summary or arbitrary executions" (ibid., para. 463). Since then the Special Rapporteur has routinely referred to these principles in correspondence with Governments regarding specific allegations and situations.

[61] E/CN.4/1989/25, para. 310.

- In one instance in which a Government repeatedly delayed and obstructed a visit, the Special Rapporteur issued a report including observations and recommendations concerning that country's situation that were based on written correspondence with the Government, the findings of other United Nations bodies, and consultations with the representatives of non-governmental organizations and other private persons.[62]

50. Some of these have proven valuable only in relation to a particular country situation. One such innovation that has proven to be of enduring value is issuing press releases to raise public awareness in a timely manner, and the need for better publicity has been a key issue raised at the annual meetings of the special procedures.

51. The Special Rapporteur will continue to attempt to develop working methods that will allow him to more fully achieve his mandate of responding effectively to allegations and would welcome the suggestions of Governments in this regard.

E. Drawing conclusions

52. What are the principal conclusions that emerge from the foregoing review of the first 25 years of experience with the mandate of the Special Rapporteur? The most important theme illustrated by the review concerns the organic evolution of such mandates. In general terms, the Commission and the Council have chosen to create special procedures in response to particular violations which have generated pressure on the international community to take action to address specific problems. Thus the initial formulation of a mandate will often be narrow. But in relation to almost all mandates it quickly becomes apparent that a particular type of violation cannot be addressed in isolation, that the definition of the problem has been unduly restrictive, and that a systematic and potentially effective response to the goals set by the sponsors of the original resolution will require a more expansive approach.

53. In the light of recent criticisms of the special procedures by some States it might seem reasonable to suspect that much of the resulting mandate expansion is generated by the mandate holder whose primary interest might be thought to be to expand his or her field of competence. In fact, however, the experience described below shows that mandates evolve in response to factors such as demands by States, new forms of violations and increasing public demands for effective responses. They are also affected by the development of new techniques and expectations within the overall human rights regime. The result is a process of organic evolution which ensures that mandates are not frozen in time and thus unable to respond to new and changing circumstances. This evolution is fully reported in the annual reports of the mandate holders and those reports are the subject of debate and constant feedback among the various stakeholders. At the end of the day, the Commission or the Council signals its acquiescence in the developments through its response to the reports, traditionally in the form of resolutions. In the vast majority of cases the developments reported are explicitly endorsed by the parent body

[62] This episode involved a contemplated joint visit to Nigeria by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers and ultimately resulted in four reports: A/51/538 and Add.1 (1996) and E/CN.4/1997/62 and Add.1 (1997).

noting or approving the report and often also requesting the mandate holder to further develop or strengthen certain measures.

54. Another observation generated by a review of the experience under the mandate concerns the oft-repeated accusation that many of the special procedures involve Western experts focusing overwhelmingly and unfairly on the problems confronted by the Governments of developing countries. The experience of the extrajudicial executions mandate flatly contradicts this stereotype. The present mandate holder is the first in a quarter of a century to come from a developed country. His predecessors have come from Kenya (Amos Wako), Senegal (Bacre Waly N'Diaye) and Pakistan (Asma Jahangir). Yet the concerns addressed and the general approach adopted have remained consistent over time. Moreover, many of the incidents highlighted by the various Special Rapporteurs have involved actions by developed country Governments. The track record of issues taken up does not reveal any neglect of the violations attributed to countries of the North at the expense of those of the South.

V. Factors hindering the effectiveness of the mandate

55. One of the ironies of the intense discussions about reform generated by the dissolution of the Commission on Human Rights and the creation of the Human Rights Council is the extent to which many of the most active Governments have been critical of the alleged excesses of the special procedures mandate holders, while the glaring inadequacies of the existing system remain largely ignored.

56. The present report has already hinted at some of these inadequacies and this final section will examine the deep problems that exist in terms of the responsiveness of the Council, and by extension the General Assembly, to the work of the special procedures.

57. In relation to visits, the fact that 90 per cent of countries identified as warranting a country visit have failed to cooperate with the system and that the Council has done nothing in response is a major indictment of the system. It discourages cooperation by other States, rewards uncooperative States, and establishes a system of impunity in relation to the most serious concerns relating to extrajudicial executions. The 27 States that have so far failed to issue requested invitations range from Security Council members such as China, the Russian Federation and the United States to States such as El Salvador, Kenya, Thailand, Israel, Uzbekistan and the Bolivarian Republic of Venezuela.

58. In relation to communications, the Council — and before it the Commission — systematically ignores any of the issues raised in the voluminous correspondence between Governments and the Special Rapporteur. No matter how grave the issue and how blatant or compromised the conduct of the relevant Government, the Council remains entirely unmoved. The Special Rapporteur has long sought to draw attention to the violations of the right to life committed by the Government of the Islamic Republic of Iran as a result of its executions of juveniles and of persons accused of crimes which cannot be considered to be among the most serious. Such executions have recently gathered pace and the silence of the international community can only bring discredit.

59. In relation to the recommendations emerging from country visits, it is extremely rare for the Council or the General Assembly to take up any of the more serious and continuing violations that are identified. In presenting his report to the General Assembly in 2006 the Special Rapporteur warned that Sri Lanka was "on the brink of a crisis of major proportions". Since that time the situation has indeed erupted into crisis and neither the Council nor the Assembly have seen fit to take any action to address the spate of extrajudicial executions being reported out of that country.

VI. Recommendation

60. **As a result of this pattern of systematic neglect of the recommendations made in the past, it seems unwise to put forward a series of new recommendations. It will suffice therefore to recommend that the Human Rights Council and the General Assembly take steps to complement their recent efforts to "reform" the system, most of which have resulted in imposing further restrictions, by efforts to actually strengthen the ability of the special procedures system to prevent and respond to serious violations of human rights. Taking steps to address the problem of States' non-cooperation in response to requests by special procedures mandate holders for visits would be an important start. Responding to the most serious issues emerging from the system of communications sent to States would be another vital step. The universal peer review mechanism would provide an important opportunity for the Council to begin taking constructive steps in relation to each of these problems. Its performance must be assessed in the light of its response on such matters.**